Supreme Court, U.S.
FILED

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No._____

IN THE SUPREME COURT OF THE UNITED STATES

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ROBERT E. APARICIO, PETITIONER.

V.

JOHN E. POTTER, POSTMASTER GENERAL, U.S. POSTAL SERVICE;
American Postal Workers Union AFL-CIO, (APWU), AND American Postal Workers Union AFL-CIO, San Francisco Local, (APWU).

RESPONDENTS.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT E. APARICIO
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Questions Presented:

At the very beginning, petitioner properly named one of the defendants, American Postal Workers Union AFL-CIO (APWU). Petitioner served to the union office which is the Local San Francisco; because petitioner did not know who counsel was for the union. Months later, counsel in Washington D C claims they were the proper counsel, and motioned for dismissal for lack of proper service. And, all-of-the-sudden there are two unions not just one – two counsels for the union not just one.

Like the postal service via the U S Attorney whom will notify a plaintiff of the proper name of defendant – Post Master General for service and who his counsel is – the U S attorney.

Should not the union have done the same with petitioner rather than creating confusion in the Courts in this case?

2. Did the Post Master General (PMG) violate petitioner's rights when the (PMG) terminated petitioner the same exact way as BOWEN in Bowen v. United States Postal Service?
3. Did the Union violate Vaca v. Sipes where the Supreme Court said "a union may not arbitrarily ignore a meritorious grievance." When the union deliberately ignored petitioner despite an arbitration hearing 27 months after petitioner was separated from the Post Master General (PMG)?
4. Does ignoring petitioner for 25 months by the union violate Supreme Court precedent in Ford v. Huffman when the court said "the bargaining representative owes complete loyalty to the interest of all whom it represents."
5. Does the union (APWU) also violate Ford Motor Supreme Court precedent when the Union lies to the Arbitrator that petitioner's representative will be on vacation, so as to delay the brief asked for by the arbitrator and then also to submit such closing brief 3 months out of time?

Does the union (APWU) violate Supreme Court precedent in Vaca when the court said "a union may not process a meritorious grievance in a perfunctory fashion." When the Arbitrator Himself says in a direct reference towards the union "There was nothing presented at the Hearing to give the Arbitrator any information on which to exclude the information presented"?

6. Does the union (APWU) violate Supreme Court precedent in Hines v. Anchor Motor freight when the court said "the union is subject always to complete food faith and honesty." When the union offered 3 documented unsupported lies to the Arbitrator in support of petitioner
7. Why do judges dislike Pro Se litigants?
8. Has stare decisis not been applied to petitioner in the lower courts?
9. Has the Ninth Circuit avoided Supreme Court Precedent provided by petitioner?
10. Has both, the District Court and the Ninth Circuit completely ignored petitioner's evidences?
11. Petitioner filed a motion for summary judgment first not the defendants. Has petitioner not been afforded correct appellate review? Namely the burden-shifting framework of McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973) ?
12. What does it mean when one party to a case does not file a response to a Circuit appellate Court?

PARTIES TO PROCEEDING

Petitioner
Robert E. Aparicio
Pro Se

V.

Respondents:
John E. Potter – Post Master General U.S. Postal Service (PMG);
The American Postal Workers Union AFL-CIO (APWU)
And American Postal Workers Union AFL-CIO Local – San Francisco.

There are no publicly held companies with the Respondants.

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Opinions Below

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

The April 7, 2005 opinion of the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) is not reported, and is reprinted at App. A.
The April 6, 2004 Order of the United States District Court for the Northern District of California (District Court) is not reported and is reprinted at App. B
The April 5, 2005 Revered and Remanded opinion of the United States Court of Appeals for the Ninth Circuit is not reported and is reprinted in App. C.

Jurisdiction

The Ninth Circuit issued it's opinion on April 7, 2005. This petition for writ of certiorari is timely pursuant to Supreme Court Rule 13, in that petitioner has filed it within 90 days of April 7, 2005. This court has jurisdiction pursuant to 28 U.S.C. s 1254 (1) in that petitioner seeks review of a final judgment of the Ninth Circuit.

Statutory Provisions Involved

This petition in part involves the application of 28 U.S.C. s 2111 and 39 U.S.C. s 1208 (b) and Federal Rule of Civil Procedure 56.

28 U.S.C. s 2111 Provides:

On the hearing of any appeal or writ of certiorari in any case, the Court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

39 U.S.C. s 1208 (b) Provides:

Suits for violation of contracts between the Postal Service and labor organization representing Postal Service employees.....may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy.

Please note, - the term, organization – not (s).

Federal Rule of Civil Procedure 56 Provides, In part:

There is no genuine issue as to any material fact, and if no such issue exists, the rule permits the immediate entry of judgment. And, that the moving party is entitled to a judgment as a matter of Law.

Statement of The Case

On Friday January 30, 1999, petitioner argued with his Postal Supervisor about two false charges. The supervisor has petitioner put off the clock. Petitioner returned to duty on Monday night at 10:30 pm. At 11:45 pm petitioner was summoned to the conference room where the supervisor was with two Postal inspectors. Petitioner was placed on Emergency off-duty status according to what the form said, however there was no emergency. Petitioner never was told to return to work. Petitioner was sent a letter of termination on April 12, 1999.

In August 1999, petitioner was told by the Local union San Francisco President that an arbitration hearing would take place in the middle of 2000. Around, in the middle of the year 2000, petitioner began calling the local union regarding arbitration. Petitioner's phone calls were ignored or never returned. Petitioner then called the regional union in San Bruno, Ca. 94066. Petitioner's phone calls were numerous but futile. Petitioner then began to call the headquarters of the American Postal Workers Union AFL-CIO in Washington D.C.. An Arbitration hearing was finally scheduled for Sept. 21, 2001 only after repeated phone calls to the national union in Washington D.C..

In around August 2001, the president of the local union San Francisco finally calls petitioner to meet to discuss an arbitration hearing which was only arranged by petitioner's persistent calling the union Headquarters in Washington. Petitioner met with the president.

The meeting was short and very little was discussed. There was no mention of a strategy or plan for the hearing; and petitioner never argued why the union ignored petitioner's phone calls.

On Sept. 21 and Nov. 29, 2001, the arbitration hearing occurred. Petitioner was called as the last witness, and was completely unaware as to being called as a witness. The union made 3 documented lies to the arbitrator in support of petitioner. Petitioner included this evidences in Petitioner's motion for Summary Judgment (MSJ). At the end of the hearing, the arbitrator asked for briefs. The president (union) said that he was going to be on vacation for the entire month of December 2001. The Arbitrator said "OK January 15, 2002." Again, petitioner began calling the union with the same results, the union ignored petitioner's phone calls. So, petitioner emailed the arbitrator asking about the case. The arbitrator emailed petitioner back saying "the representative has the decision and that petitioner has a virus called "gonner," a May 25, 2002 email.

There are no hearing transcripts, but what the arbitrator does produce is a 10 page decision. This 10 page decision is what petitioner uses to prove perfunctoriness on the part of the union which was used in petitioner's (MSJ).

With respect to the Post Master General (PMG), petitioner uses the letter of termination to prove the PMG violated the terms of the Collective Bargaining agreement (CBA) along with parts of the contract. This letter of removal was used in petitioner's MSJ. The arbitrator's 10 page decision and the letter of termination are Authentic, together they prove unfair representation. Therefore, there is
no need for a trial. The defendants cannot disprove petitioner's case nor would they have a defense – thus petitioner filed his MSJ first not the defendants.

Ironically, both of the Lower courts completely ignored petitioner's evidences and U.S. Supreme Court Precedents and lower court cases. From the very out-set of appearing in the District Court, petitioner has felt being treated differently. At one hearing, there were two security guards directly behind petitioner and one about 5 rows in front of petitioner. The district court claimed, at the motion hearing of which transcripts were included in petitioner's appeal to the Ninth Circuit, that petitioner couldn't survive a summary judgment on a complaint alone; when petitioner filed his MSJ first and defendants couldn't disprove petitioner's MSJ. Whats more, on page 15 lines 21 – 23 of the MSJ motion hearing, the district court did acknowledge petitioner's phone records and what the arbitrator denoted on the July 18, 2003 motion hearing. But, in the District court decision, the court said "petitioner does not have evidence that a reasonable jury would find in favor of."

Reasons for Granting the Writ:

This case has been decided in direct conflict with other Circuit cases on the issue of Bad Faith which is still an unsettled facet of law. This case has also been decided with the complete ignoring of Supreme Court precedents which is the fundamental basis of law which petitioner has relied upon – in addition to petitioner's evidences; both of which was provided in petitioner's MSJ.

The decision in this case also has general importance that will continue to effect union workers – postal workers in particular. In BOWEN, the stage was viewed how the PMG rids employees without due process.